

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B04

PLR-111794-11

Date:

September 01, 2011

Re:

### LEGEND:

Donor =

Spouse =

Attorney =

Accountants =

Trust =

Date 1 =

Date 2 =

Year =

Property =

Dear :

This letter responds to your authorized representative's letter of March 11, 2011, requesting an extension of time under § 2642 of the Internal Revenue Code and § 301.9100-3 of the Procedure and Administration Regulations to allocate Donor's and Spouse's GST exemption to a transfer to a trust.

The facts and representations submitted are summarized as follows. On Date 1, Donor created Trust, an irrevocable trust, for the benefit of his descendants. On Date 2, Donor transferred the Property to Trust.

On their Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Returns filed for Year, Donor and Spouse treated the transfer as made one-half by each

under § 2513.<sup>1</sup> Although Attorney had advised Donor and Spouse to allocate their GST exemption in reporting the transfer, Accountants omitted the allocation when they prepared the Forms 709. Consequently, no GST exemption was allocated to the transfer. Donor has since died.

The executor of Donor's estate and Spouse request an extension of time under § 2642(g) and § 301.9100-3 to allocate GST exemption to the transfer to Trust and rulings that (i) the allocations will be effective as of the date of the transfer, and (ii) the values of the transfer, when made, will be used to determine the amount of GST exemption to be allocated.

Section 2601 imposes a tax on every generation-skipping transfer (GST). Section 2611(a) defines a "generation-skipping transfer" as (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Section 2631(a), as in effect for Year, provides that every individual shall be allowed a GST exemption of \$1,000,000 which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor.

Section 2632(a) provides that any allocation by an individual of GST exemption under § 2631(a) may be made at any time on or before the date prescribed for filing the estate tax return for such individual's estate (determined with regard to extensions), regardless of whether such a return is required to be filed.

Section 26.2632-1(b)(4)(i) of the Generation-Skipping Transfer Tax Regulations provides that an allocation of GST exemption to property transferred during the transferor's lifetime, other than a direct skip, is made on Form 709.

Section 2642(b)(1) provides, in part, that if the allocation of the GST exemption to any transfers of property is made on a gift tax return filed on or before the date prescribed by § 6075(b) for such transfer, the value of such property for purposes of determining the inclusion ratio shall be its value as finally determined for purposes of chapter 12 (within the meaning of § 2001(f)(2)), and such allocation shall be effective on and after the date of such transfer.

Section 2642(g)(1)(A) provides, in part, that the Secretary shall by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in § 2642(b)(1).

Section 2642(g)(1)(B) provides, in part, that in determining whether to grant relief

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<sup>1</sup> Under § 2513(a)(1), if both spouses have signified their consent, a gift made by one spouse to any person other than his spouse shall be considered as made one-half by him and one-half by his spouse.

under § 2642(g)(1), the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument and such other factors as the Secretary deems relevant. For purposes of determining whether to grant relief, the time for making the allocation shall be treated as if not expressly prescribed by statute.

Notice 2001-50, 2001-1 C.B. 189, provides, in part, that under § 2642(g)(1)(B), the time for allocating the GST exemption to lifetime transfers is to be treated as if not expressly prescribed by statute. The Notice further provides that taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) under the provisions of § 301.9100-3.

Section 301.9100-1(c) provides that the Commissioner in exercising the Commissioner's discretion may grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-3(a) provides, in part, that requests for extensions of time for regulatory elections that do not meet the requirements of § 301.9100-2 (for automatic extensions) must be made under the rules of this section. Requests for relief subject to this section will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith and the grant of relief will not prejudice the interests of the Government.

Under § 301.9100-3(b)(1)(v), a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Based on the facts submitted and representations made, we conclude that the requirements of § 301.9100-3 are satisfied. Therefore, the executor of Donor's estate and Spouse are granted an extension of time of 120 days from the date of this letter to allocate GST exemption to the transfer to Trust made on Date 2. The allocations will be effective as of the date of transfer, and the value of the Property, on the date of transfer, will be used to determine the amount of GST exemption to be allocated to Trust.

The allocations should be made on Forms 709 for the appropriate calendar year and filed with the Internal Revenue Service, Cincinnati Service Center— Stop 82, Cincinnati, Ohio 45999. A copy of this letter should be attached to the Forms 709.

The rulings contained in this letter are based upon information and representations submitted by the taxpayers and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the

material submitted in support of the request for ruling, it is subject to verification on examination.

Except as specifically ruled herein, we express no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code. This ruling is directed only to the taxpayers who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Associate Chief Counsel  
(Passthroughs & Special Industries)

By:  
Leslie H. Finlow, Senior Technician Reviewer  
Branch 4  
Office of Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures  
Copy for § 6110 purposes